

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

WILLIAM J. CRUZ and
MEDSCAN, P.S.C.

Defendant.

CIVIL NO. _____

CLAIMS OF FRAUD TO DEPARTMENT
OF HUMAN HEALTH SERVICES,
MEDICARE PROGRAM, PURSUANT
TO THE FALSE CLAIMS ACT,
31 U.S.C. §3729, ET SEQ.

COMPLAINT

COMES NOW the United States of America, by and through the undersigned attorneys,
and very respectfully alleges and prays as follows:

I. INTRODUCTION

1. The United States, files this action under the False Claims Act, 31 U.S.C. §3729, et seq. (“FCA”), and common law to recover civil monetary penalties from the defendants’ false claims to the United States Department of Health and Human Services, Medicare Program, made in violation of federal law.

II. JURISDICTION AND VENUE

2. Jurisdiction is proper pursuant to 28 U.S.C. §1345, and its general equitable jurisdiction.

3. Venue is proper in this District under 28 U.S.C. §1391 and 31 U.S.C. §3732(a).

4. Pursuant to 31 U.S.C. § 3731(b)(1), a civil action under the FCA may be brought within six (6) years after the date on which the violations of §3729 were committed.

III. PARTIES

5. The Plaintiff is the United States of America, on behalf of the Department of Health and Human Services (“HHS”).

6. Defendant, William J. Cruz (“Cruz”), is of legal age, single and resident of San Juan. Cruz is a diagnostic radiologist with offices located in Guaynabo, Puerto Rico and a participating provider in the Medicare Program for the period of May 2017 to May 2018.

7. Medscan is a for profit corporate entity engaged in the healthcare industry as a provider of diagnostic radiology services, mainly within the Commonwealth of Puerto Rico, and is a participating provider in the Medicare Program. Cruz was also the President and principal shareholder of Medscan for the period of May 2017 to May 2018.

8. X, Y and Z are natural or legal persons, acting on their own or organized as partnerships or corporate entities, be that as limited liability corporations, professional service corporations, or in any other form permitted by law, whom we designate with fictitious names, as there true names are not known at present time. X, Y and Z are jointly and severally responsible and may answer to the Plaintiff for aiding, abetting and/or causing fraudulent claims to be submitted to the United States Government for payment, or furthering the fraudulent conduct by concealing the scheme, proceeds or assets resulting of fraud.

IV. RELEVANT FACTS

THE MEDICARE PROGRAM

9. Except as otherwise specifically noted, the allegations set forth below describe the the Medicare program (“Medicare”), as managed by the United States Department of Health and Human Services (“HHS”) through its executive component, the Center for Medicare and Medicaid Services (“CMS”), for the period of May 2017 to May 2018.

10. HHS administers Medicare, through CMS. Medicare is a federal health care benefit program set forth in title XVIII of the Social Security Act, 42 U.S.C. §§1395 et seq., that provides medical insurance for covered services to qualified individuals.

11. Medicare consists of four different parts. “Part A” of Medicare covers health services provided by hospitals, skilled nursing facilities, hospices and home health agencies. “Part B” of the Medicare Program is a medical insurance program that covers, among other things, certain physician services, outpatient services, and other services, including face to face office visits. “Part C” of Medicare, commonly referred to as Medicare Advantage (MA), provides beneficiaries with all of the services provided under Parts A and B (except hospice care), in addition to mandatory supplemental benefits and optional supplemental benefits. “Part D” is an optional benefit that offers prescription drug coverage to everyone with Medicare. Parts D is not at issue here.

MEDICARE BILLING PROCEDURE UNDER PART C

12. Under Part C, beneficiaries enroll in a managed care plan administered by private health insurance companies or Medicare Advantage Plans, which are contracted by CMS. Medical Card System (“MCS”), Triple-S Advantage (“SSS”) and Medicare y Mucho Mas (“MMM”), (hereinafter will be collectively referred to as the “MA Plans”), are some of the entities contracted by CMS to provide managed care to beneficiaries under Part C.

13. The above named MA Plans are risk-bearing entities, licensed or otherwise authorized by the State to assume risks for offering health insurance or health benefits coverage, such that the entity is authorized to accept prepaid capitation for providing, arranging, or paying for comprehensive health services under a Medicare Advantage contract.

14. As MA Plans, these are responsible of receiving, adjudicating and paying claims of authorized providers seeking reimbursements for the cost of health care benefits, items, or services provided to Medicare Part C beneficiaries.

15. Physicians who perform medical services in connection with the Medicare program apply for and if approved, are assigned a “number”. The number allow the physicians to submit bills, commonly referred to as “claims”, for payment to Medicare, through MA Plans, in order to seek reimbursement for medical services that they had provided to Medicare Part C beneficiaries.

16. In order to receive payment from Medicare through the MA Plans, a physician is required to submit a health insurance claim form, known as Form HCFA-1500 (“HCFA 1500”) wherein the physician certifies that the claims are true, correct, complete and that the form was prepared in compliance with the laws and regulations governing the Medicare program. Physicians further certify that the services billed were medically necessary and were in fact provided as billed.

V. UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES’ (HHS) FINDINGS

17. Plaintiff incorporates and re-alleges paragraphs 1 through 16 as if fully set forth herein.

18. The HHS-Office of the Inspector General (OIG) conducted an investigation of claims submitted by Cruz and Medscan to MA Plans, for services and claims processed and paid for the period of May 2017 to May 2018.

19. The investigation uncovered that Cruz and Medscan, knowingly made or caused to be made false statements in support of claims for Medicare program funds, through submissions of HCFA 1500 to MA Plans, for non-emergency room services rendered, while CMS had their billing privileges revoked.

20. During the period of May 2017 to May 2018, while the Center for Medicare & Medicaid Services (CMS) had revoked the billing privileges of Dr. Cruz and Medscan, they billed Medicare Advantage Organizations (MAOs) that operated Health Maintenance Organizations (HMOs), for non-emergency room services rendered.

21. Cruz and Medscan failed to notify the HMOs of CMS' decision to revoke their privileges effective May 13, 2017. These omissions encompassed a material nondisclosure, by which Cruz fraudulently induced and misled the MAOs, to remain in a contractual relationship, in order to gain access to Medicare Funds.

22. During this same period, Cruz also billed Parts A and B of the Program as rendering physician.

VII. CLAIM FOR RELIEF
False Claims Act 31 U.S.C. §3729(a)(1)

23. This is a claim for civil monetary penalties under the False Claims Act (FCA), 31 U.S.C. §3729(a)(1).

24. Paragraphs 1 through 16, and 18 through 22 of this Complaint are hereby re-alleged and incorporated as though fully set forth herein.

25. By virtue of the acts described above, defendant knowingly presented and caused to be presented to the United States, false and fraudulent claims for payment and approval to the Medicare Trust Fund, by way of the MA Plans.

26. As part of his scheme to defraud, Cruz and Medscan submitted and caused to be submitted over 8,000 unique claims to the Medicare program, a substantial amount of these with Cruz billing identifier. These claims constitute false representations and are contrary to the provisions of the Act, Regulations, and the Medicare Program Integrity Manual.

27. As a result of the false statements and claims submitted for federal moneys, HMOs paid from Medicare funds for services that were rendered while Cruz and Medscan had their billing privileges revoked.

28. Under the FCA, a “claim” includes requests for money presented to the United States or to a contractor, grantee or other recipient, if the money is to be used on the government’s behalf or to advance a government interest, as long as the United States provided any portion of the money requested.

29. Each of these false statements constitute a unique claim of provider fraud on a managed care organization, for which a civil monetary penalty must be assigned, as allowed by law in an amount ranging from \$11,181.00 and \$22,363.00 each.

XII. PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests that judgment be entered in its favor and against the defendant for civil monetary penalties, as allowed by law, ranging from \$11,181.00 and \$22,363.00, for each unique claims to be fixed at the discretion of the Court; and such other and further relief as this Court may deem just and proper.

RESPECTFULLY SUBMITTED, in San Juan, Puerto Rico, this 25th day of June of 2020.

W. STEPHEN MULDROW
United States Attorney

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UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

CATEGORY SHEET

You must accompany your complaint with this Category Sheet, and the Civil Cover Sheet (JS-44).

Attorney Name (Last, First, MI):

USDC-PR Bar Number:

Email Address:

1. Title (caption) of the Case (provide only the names of the first party on each side):

Plaintiff:

Defendant:

2. Indicate the category to which this case belongs:

☐ Ordinary Civil Case

☐ Social Security

☐ Banking

☐ Injunction

3. Indicate the title and number of related cases (if any).

4. Has a prior action between the same parties and based on the same claim ever been filed before this Court?

☐ Yes

☐ No

5. Is this case required to be heard and determined by a district court of three judges pursuant to 28 U.S.C. § 2284?

☐ Yes

☐ No

6. Does this case question the constitutionality of a state statute? (See, Fed.R.Civ. P. 24)

☐ Yes

☐ No

Date Submitted:

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

AUSA Rafael J. Lopez-Rivera
US Attorney's Office, 350 Chardon Ave, Suite 1201
San Juan, PR 00918 Ph. 787-766-5656

DEFENDANTS

William J. Cruz

County of Residence of First Listed Defendant San Juan, PR

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION
THE CASES, USE THE LOCATION OF LAND
INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input checked="" type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
False Claim Act 31 U.S.C. § 3729, et seq.

Brief description of cause:

Claim of Fraud to Department of Human Health Services, Medicare Program

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/25/2020

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE